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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 18, 2016

12:03 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Telephone Conference, on the Record, Regarding Reed Claims
Objection. Pre-trial Conference set for 09/15/2016 at 10:00
am. Trial set for September 26 at 9:00 AM, continuing day to
day on September 27th, September 28th, September 29th and
September 30th.

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A P P E A R A N C E S : (TELEPHONICALLY)

REED SMITH LLP

Attorneys for ResCap Borrower Claims Trust

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BY: BARBARA K. HAGER, ESQ.

FRANK J. REED, IV

Claimant - Pro Se

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right, we're on the record in
3 Residential Capital, 12-12020. Can I have the appearances,
4 please, for the Trust?

5 MR. REED: Frank Reed, creditor pro se.

6 THE COURT: All right, Mr. Reed. And for the Trust?

7 MS. HAGER: Good morning, Your Honor. Barbara Hager
8 with Reed Smith, co-counsel for the Residential Capital
9 Borrower Claims Trust.

10 THE COURT: Thank you. All right, so I guess we last
11 had a conference on July 13th, and I set the telephone -- a
12 further telephone conference for today. There were some open
13 issues that I think Mr. Reed and Ms. Hager were going to try
14 and discuss and resolve.

15 So Ms. Hager, tell me where we are.

16 MS. HAGER: Yes, Your Honor. This is Barbara Hager.
17 Your Honor, Mr. Reed and I spoke on the phone and also had some
18 email communications about his document requests and also his
19 notice of deposition directed to the Trust, and we were able to
20 narrow the scope down a little bit. Mr. Reed did agree to take
21 out a number of categories, which was helpful.

22 But there are still a number of categories on both the
23 document requests and the notice of deposition that I believe
24 are an issue for a number of reasons. The main issue is that a
25 lot of these do not relate in any way, it seems, to Mr. Reed's

1 claim for damages. They're also vague and overbroad. But most
2 importantly, I think, with respect to the narrow issues at hand
3 for trial, he's just seeking information that has nothing to do
4 with his damages, which was something that was discussed at the
5 last in-person status conference with the Court.

6 Now, of course, typically in doing my written response
7 to document requests I would include my objections and send
8 those out together with any of the documents that I didn't have
9 objections to; but here, since we're on such a tight time
10 frame, I was hoping that perhaps there was some way to address
11 this up front, because otherwise we're going to run into a
12 situation where -- perhaps, where we've got a timing issue.
13 These are going to be due, I believe, the end of next week.

14 So I would be looking, then, for Your Honor's
15 direction -- I'm not sure whether you would want us to file a
16 motion on shortened notice or how you'd like us to handle these
17 remaining outstanding requests.

18 THE COURT: Tell me what the disputed areas, and then
19 I give Mr. Reed a chance to address them.

20 MS. HAGER: Sure. With respect to the document
21 requests themselves, Your Honor, Mr. Reed is seeking notices or
22 written complaints received by GMAC between 2003 and 2008 from
23 other borrowers claiming financial injury or other harm. Other
24 categories are notices, bulletins, advisory statements or
25 written complaints received by GMAC for the time period of 2003

1 through 2010 from any governmental or quasi-governmental agency
2 regarding injury or harm to mortgagors resulting from wrongful
3 or improper foreclosure practices. All complaints received by
4 GMAC -- and this one specifically refers to legal
5 proceedings -- received by GMAC between 2003 and 2010 from or
6 on behalf of mortgagors claiming financial injury or other harm
7 resulting from alleged wrongful foreclosure. Internal GMAC
8 memos, guides, training materials, or handbooks pertaining to
9 foreclosure and/or the lis pendens process in New Jersey,
10 effective between 2003 and 2008. Communications between GMAC
11 and its clients and vendors in regard to Frank Reed's account.
12 Internal policies and procedure manuals regarding delinquent
13 accounts and foreclosures.

14 Those are the document requests that we believe are
15 improper.

16 THE COURT: Just give me that last one again?

17 MS. HAGER: The last one was internal policies and
18 procedure manuals regarding delinquent accounts and
19 foreclosures.

20 THE COURT: Okay. Mr. Reed, do you want to respond?

21 MR. REED: Yes, Your Honor. We -- one of the elements
22 for the breach of contract is the foreseeability of a class of
23 harm or type of harm. It doesn't have to be the specific harm
24 to me, but if my harm is within a certain class, the
25 foreseeability of the causation of that class can be invoked as

1 a defense by the Trust.

2 So the issue is trying to find -- and believe me, I
3 don't want all of this extra work, it's very difficult. I
4 asked counsel if they'd stipulate to the fact that they have
5 aware -- they're aware of the fact that filing a foreclosure
6 can cause harm and interfere with someone's ability to obtain
7 and maintain financing. And not that they -- I don't ask them
8 to admit that it actually did this to me. I would rely on my
9 proofs to that effect. But the point I'm trying to make is the
10 bridging point that they have and should be aware that filing a
11 foreclosure is harmful to someone's ability to obtain and
12 maintain financing, because that is one of the main -- one of
13 the harms that we're litigating here.

14 And so we look to other sources. We looked -- where
15 is it that they have notice that this has caused harm? Have
16 they been put on notice by the Federal Reserve? I believe that
17 they have, based on my involvement prior, Your Honor, in court
18 proceedings. Do they have notice that this kind of behavior
19 causes harm by, say there -- in New Jersey, there's a New
20 Jersey Practices Series which discusses it. Are they using the
21 New Jersey Practices Series in their foreclosure practices?
22 Because it actually -- it talks about the harm that comes from
23 filing foreclosure. So should they -- do they know this or is
24 did they constructively know it, that it causes harm?

25 And the awareness to it -- to whether or not this

1 class of harm could happen is an issue. I foresee it being an
2 issue. And Ms. Hager's refusal to stipulate to the general
3 knowledge of it shows that they have -- that they're afraid of
4 it. So I have to then now go through it and see where I can
5 show that -- that they should be aware of it.

6 THE COURT: Okay. I'm going to go ahead and rule on
7 the record with respect to the six categories as to which the
8 Trust objects to producing documents. With respect to the
9 first, which was notice or written complaints concerning other
10 borrowers, the objection is sustained. The issues for trial
11 relate to other business ventures of Mr. Reed and whether he
12 can show damages with respect to it. So the first category of
13 the objection is sustained.

14 The second category were notices received between 2003
15 and 2010 from governmental agencies regarding improper
16 practices. The objection is sustained for the same reason.

17 Category 3 was all complaints between 2003 and 2010
18 from mortgagors having nothing to do with Mr. Reed. That
19 objection is sustained.

20 I'll come back in a minute to internal GMAC guidelines
21 to foreclosure or lis pendens. I'll come back to that in a
22 second.

23 With respect to the fifth category which was -- I
24 don't have it verbatim -- but it was communications with
25 vendors or others regarding Reed, the objection is overruled.

1 All nonprivileged documents concerning communications about Mr.
2 Reed need to be produced.

3 And the sixth category were internal policies on
4 delinquent accounts in foreclosure. To the extent any internal
5 policies discuss or relate in any way to properties or business
6 opportunities of borrowers other than the one for which
7 foreclosure is being sought or which were delinquent, I'm going
8 to permit -- so I'm going to require production to the extent
9 any policies -- internal policies deal with or allude to in any
10 way possible other consequences that could come to a borrower
11 from having his account determined to be delinquent or
12 foreclosure commenced.

13 Let me come back to the internal GMAC guidelines with
14 respect to foreclosure and lis pendens. I guess, there as
15 well -- tell me, Ms. Hager, what documents fall under that
16 category? Do you know what documents GMAC has with respect to
17 the guidelines?

18 MS. HAGER: Your Honor, this is Barbara Hager. I do
19 not -- I do not know what documents they might have. There --
20 it may be the case that there aren't any policies and
21 procedures. I don't -- I really don't have an answer to that
22 at this time.

23 THE COURT: Okay. Well, I'm going to -- my ruling is
24 going to be, with respect to the internal GMAC guidelines to
25 foreclosure and lis pendens -- look, the issue with respect to

1 Mr. Reed's home have been dealt with and he's been awarded
2 damages by the Court, and that portion of my decision was
3 affirmed. So it's only if internal GMAC guidelines refer,
4 relate, or deal in any way with the effects or consequences on
5 properties other than the one in foreclosure or as to which a
6 lis pendens is filed. We're not going to revisit issues that
7 have already been decided by the Court.

8 Mr. Reed is entitled to obtain discovery of any
9 documents that would bear on, relate to, refer to potential
10 consequences to a borrower for other investment opportunities
11 or other properties that are not subject to the mortgages
12 serviced by or owned by GMAC or one of the ResCap companies.
13 So the objection is sustained as to categories 1, 2, and 3.
14 They're overruled completely as to category 5, which were any
15 communications regarding Mr. Reed other than, obviously, if
16 there's privilege, that will apply.

17 And as to internal guidelines regarding foreclosure or
18 lis pendens or internal policies regarding delinquent accounts
19 and foreclosure, those are only to be produced to the extent
20 that they refer or relate to -- I'll use a term for this, but I
21 don't necessarily limit it to that -- sort of the collateral
22 consequences, the other -- Mr. Reed talks about the -- argues
23 that it's foreseeable consequences. To the extent that any of
24 those internal policies or guidelines refer or relate in any
25 way to that, that those have to be produced as well.

1 All right. Now, let's deal, Ms. Hager, with respect
2 to -- what about with respect to the categories for 30(b)(6)
3 deposition?

4 MS. HAGER: Yes, Your Honor. This is Barbara Hager.
5 Your Honor, Mr. Reed has requested -- one category is
6 underwriting, period. That's the extent of it. The other
7 categories, financial -- excuse me -- Federal Reserve
8 investigations, findings, consent decrees, and wrongful
9 foreclosure harm. The next is methods and practices regarding
10 delinquent account notification. The next is due diligence
11 standards and best practices standards for proceeding to
12 foreclosure. The next category is due diligence standards and
13 best practices standards for supervising foreclosure. And
14 finally, prior litigation regarding wrongful foreclosures from
15 2003 through 2010. Those are the only remaining categories
16 that we haven't been able to work through.

17 THE COURT: All right. You want to address that, Mr.
18 Reed?

19 MR. REED: Your Honor, it's the same as what I said
20 regarding documents. My primary goal here is to suss out
21 evidence that would show that the GMAC Mortgage would have
22 knowledge that they -- to use their word -- they can cause
23 collateral harm to an individual if their mortgages are
24 foreclosed upon, or made delinquent, or et cetera. And the
25 issue is the significance of that.

1 And I've tried to craft it in that regard, taking
2 guidance from as much research as I can. And I welcome your
3 continued guidance as well, in this matter.

4 THE COURT: Okay. I'm going to rule with respect to
5 the categories. With respect to underwriting, the objection is
6 sustained. With respect to the Federal Reserve investigation,
7 the objection is sustained. With respect to methods and
8 practices for delinquent accounts. I'll permit inquiry related
9 to consideration of effects on other investment opportunities.
10 In other words, because Mr. Reed claims that a foreseeable
11 consequence of foreclosure on his home was to adversely affect
12 his ability to finance or proceed with other investments. I'll
13 permit examination, if there is anything that can be gained
14 from it with respect to those collateral effects, foreseeable,
15 unforeseeable, et cetera.

16 With respect to due diligence standards for proceeding
17 to foreclosure, the objection is sustained. That's already
18 been dealt with in the Court's prior decision.

19 With respect to the due diligence standards for
20 supervising foreclosure, the objection is sustained, except to
21 the extent -- in other words, if Mr. Reed -- and I don't know
22 if the record would support this -- if Mr. Reed raised the
23 issue with GMAC in trying to obtain a forbearance or loan
24 modification or some relief with respect to his home, if he
25 raised the issue with GMAC about the consequences to me of your

1 doing that would be to foreclose, prevent, harm my efforts to
2 proceed with these other potential business ventures, to the
3 extent that the record establishes or Mr. Reed in good faith
4 argues that I -- and I think I alluded to this at the last
5 hearing -- if he raised with GMAC that I've got these other
6 business ventures. You shouldn't be foreclosing because you're
7 going to harm me by the effect on obtaining financing and
8 proceeding, I'll permit the examination with respect to that
9 subject. When I say "that subject", that subject is the effect
10 on other business ventures. But otherwise the objection is
11 sustained.

12 So those will be the Court's rulings. I think that
13 should -- Ms. Hager, does that resolve the disputed categories?

14 MS. HAGER: Your Honor, there was one additional
15 category in the notice of deposition --

16 THE COURT: Okay.

17 MS. HAGER: -- which was prior litigation regarding
18 wrongful foreclosures.

19 THE COURT: Oh, right. The objection is sustained.
20 No, that's right. I have that on my list here. The objection
21 is sustained. We're not -- this has got nothing to do with
22 what ResCap GMAC -- what litigation they may have been involved
23 in with others. So that objection is sustained.

24 All right, any other categories, Ms. Hager?

25 MS. HAGER: No, Your Honor. That covers it. Thank

1 you.

2 THE COURT: Okay, Mr. Reed, anything else you want to
3 raise today?

4 MR. REED: No, Your Honor. I think -- like I said --

5 THE COURT: Okay.

6 MS. HAGER: -- you understand what I'm trying to
7 obtain.

8 THE COURT: I do. And I'm fully prepared to hear
9 whatever evidence that you can -- that's relevant and material
10 that you can introduce that deals with the other ventures that
11 you were seeking to do and the impact that foreclosure had on
12 it and whether that results in compensable damages to you.
13 Okay?

14 MR. REED: Sure.

15 THE COURT: All right. Thanks very much to both of
16 you. Okay, we're adjourned.

17 MS. HAGER: Thank you, Your Honor.

18 MR. REED: Thank you, Your Honor. Bye-bye.

19 (Whereupon these proceedings were concluded at 12:22 PM)

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I N D E X

RULINGS

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Trust's objection to produce notices or written complaints received by GMAC between 2003 and 2008 from other borrowers claiming financial injury or other harm, is sustained.	8	10
Trusts' objection to requests for notices received between 2003 and 2010 from governmental agencies regarding improper practices, sustained.	8	18
Trust's objection to request for all complaints between 2003 and 2010 from mortgagors, sustained.	8	20
Trust's objection to request for communications between GMAC and its clients and vendors in regard to Frank Reed's account is overruled, and the documents will be produced.	9	2

	PAGE	LINE
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2	Internal policies and procedure manuals	9 6
3	regarding delinquent accounts and	
4	foreclosures that allude to possible	
5	consequences regarding other properties or	
6	businesses will be produced.	
7	Regarding Internal GMAC Guidelines, Mr. Reed	10 10
8	is entitled to obtain discovery of any	
9	documents that would bear on, relate to,	
10	refer to potential consequences to a	
11	borrower for other investment opportunities	
12	of other properties that are not subject to	
13	the mortgages serviced by or owned by GMAC	
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15	Trust's objection to examination on	12 7
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19	With respect to examination on methods and	12 9
20	practices on delinquent accounts,	
21	examination is permitted regarding	
22	collateral effects of foreclosure.	

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3	diligence standards for proceeding to		
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7	foreclosure is sustained except as to Mr.		
8	Reed's communications with GMAC regarding		
9	potential harm to other business ventures.		
10	Trust's objection to examination on prior	13	21
11	litigation regarding wrongful foreclosure is		
12	sustained.		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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Date: July 19, 2016